

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No.: 5:19-cv-327

MANUEL TORRES,)
)
Plaintiff,)
)
v.)
)
TRACY LYNN CARTER, in his official)
capacity as Lee County Sheriff; TOWN OF)
APEX, NORTH CAROLINA; TOWN OF)
SILER CITY, NORTH CAROLINA; and)
NIGHTHAWK COMPANY POLICE,)
LLC,)
)
Defendants.)
)

**PLAINTIFF’S MOTION TO DISMISS PARTY
PURSUANT TO RULE 21 OR RULE 42(a)(2)**

Plaintiff Manuel Torres, hereby respectfully moves the Court pursuant to Rule 21 or, in the alternative, Rule 41(a)(2) of the Federal Rules of Civil Procedure for a voluntary dismissal with prejudice of his Count II Retaliation Under Title VII claim against Nighthawk Company Police, LLC (“Nighthawk”), for the reasons set forth below and in the accompanying memorandum.

1. Plaintiff sued Nighthawk in Count II for retaliation under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*
2. Plaintiff has confirmed during the course of written discovery that Nighthawk employs fewer than the requisite number of employees to state a claim under Title VII; more particularly, Nighthawk is not an employer as defined by 42 U.S.C. § 2000e(b).
3. Depositions are scheduled to begin July 20, 2020, to last through mid-August.
4. Mediation is scheduled to take place on August 4.

5. The deadline for dispositive motions is scheduled for mid-September.
6. A trial date has not yet been set.
7. Plaintiff's counsel discussed this dismissal by telephone with Nighthawk's counsel on Monday, July 13, 2020, and counsel for Nighthawk requested Plaintiff's counsel to voluntarily dismiss his claim against Nighthawk because the employer did not meet the numerosity requirement of Title VII.

WHEREFORE, Plaintiff respectfully moves this Court to dismiss with prejudice Defendant Nighthawk Police Company, LLC, from this action.

Dated: July 17, 2020.

Respectfully submitted,

/s/ Deborah Dewart
Deborah J. Dewart
N.C. Bar No. 30602
620 E. Sabiston Drive
Swansboro, North Carolina 28584-9674
Telephone: (910) 326-4554
debcpa@earthlink.net

GIBBS & ASSOCIATES LAW FIRM, LLC
BY: /s/ Jonathan D. Gibbs
Jonathan D. Gibbs*
Ohio Bar No. 0094455
6398 Thornberry Ct.
Mason, Ohio 45040
Telephone: (513) 234-5545
Fax: (888) 500-4638
jgibbs@gibbs-lawfirm.com
**Appearing pursuant to Local Rule 83.1*

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this July 17, 2020, he has filed the foregoing Plaintiff's Motion to Dismiss Party Pursuant to Fed. R. Civ. P. 42(a)(2) through the Court's CM/ECF system and that all parties to this action will be served through that system.

GIBBS & ASSOCIATES LAW FIRM, LLC

BY: /s/ Jonathan D. Gibbs

Jonathan D. Gibbs*

**Appearing pursuant to Local Rule 83.1*